

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF MARICOPA

STATE OF ARIZONA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No.
	)	CR2012-007897-001DT
DAN JAY EARL,	)	
	)	
Defendant.	)	
_____	)	

Phoenix, Arizona  
February 24, 2015  
3:15 p.m.

BEFORE: THE HONORABLE VIRGINIA L. RICHTER, JUDGE PRO TEM

REPORTER'S TRANSCRIPT OF PROCEEDINGS

STATE'S MOTION TO DISMISS WITHOUT PREJUDICE

Renée A. Mobley, RPR, CSR  
Certified Reporter  
Certificate No. 50500

(COPY)

A P P E A R A N C E S

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On Behalf of the State:

Mr. Scott M. Blum  
Deputy County Attorney

On Behalf of the Defendant:

Mr. Thomas A. Gorman  
Attorney at Law

P R O C E E D I N G S

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THE COURT: This is the time set for hearing in  
CR 2012-007897, State of Arizona vs. Dan Jay Earl.

Could I have appearances, please?

MR. BLUM: Scott Blum on behalf of the State.

MR. GORMAN: Good afternoon, Your Honor. Tom  
Gorman appearing with Mr. Dan Earl, who is present ready  
to proceed.

THE COURT: And, Mr. Earl, if you would please  
state your full name and date of birth.

THE DEFENDANT: Dan --

MR. GORMAN: Stand up.

THE DEFENDANT: Dan Jay Earl. May 15, 1976.

THE COURT: Thank you.

Mr. Blum.

MR. BLUM: Judge, we briefly spoke in chambers.  
I have talked with defense counsel.

At this time, the State is going to move to  
dismiss without prejudice.

It is a victim case, and if it ends up that there  
is any additional information or fraud that was learned,  
the State should have the right to review that.

I want to make a record as to the reason why the  
State is dismissing and we're requesting a dismissal.

1           At noon, when the judge asked us to call all of  
2   our witnesses, I called our all -- I recalled all of my  
3   witnesses, and a John Scotello, which is the finance  
4   manager, is now indicating an extreme desire not to be  
5   present. However, he did say he would honor the subpoena.  
6   However, he has recanted.

7           By that, I mean he has changed what he has  
8   previously stated. He now says that Lund Cadillac was  
9   stupid -- those were his words -- for heading off the car,  
10   a 2007 Cadillac, and they were stupid for letting him have  
11   the vehicle. He had his -- he has his opinions, and he  
12   indicated that.

13           And based on that, I had a personal contact with  
14   him on the phone two weeks ago. I reminded him that he  
15   did not state that to me. I can see nowhere in the file  
16   where this was ever learned by the previous prosecutor  
17   back in 2011, Jeff Parr. Through all the notes, this  
18   appears to be information as what I consider Brady,  
19   recanting and learning that today at noon.

20           For that reason -- and I have contacted  
21   Lund Cadillac, who is the main victim. I've contacted  
22   their victim attorney and informed them of this  
23   information and the State's process.

24           THE COURT: Mr. Gorman, any objection to  
25   dismissal without prejudice?

1           MR. GORMAN: No, Your Honor, but I do want to  
2 make a brief record.

3           THE COURT: All right.

4           MR. GORMAN: It is this: Is that the Court is  
5 aware Mr. Earl is charged with theft under the provision  
6 of unauthorized taking with intent to permanently deprive.

7           There has been a campaign by Lund to really  
8 attack this man and slur his good reputation.

9           He recently was named by -- is it the Gilbert  
10 Grade School?

11          THE DEFENDANT: Gilbert Public Schools.

12          MR. GORMAN: Gilbert Public Schools, the parent  
13 of the year for the work he did with the school, which was  
14 charitable work in volunteering his time and, et cetera.  
15 He has a great reputation in the community.

16          And this started with Lund Cadillac offering a  
17 zero percent financing on a 2008 Escalade, and Mr. Earl  
18 responded to that.

19          His position and my position -- and I think it's  
20 a righteous position -- is that he had an installment -- a  
21 retail installment contract with Lund Cadillac as the  
22 creditor. It was for zero percent interest.

23          He left his car, which was a 2007 Escalade of  
24 significant value. It was referenced in the retail  
25 installment contract. Lund was the creditor.

1 Zero percent. All the terms were there. A down payment  
2 was expressly acknowledged in the contract. He signed a  
3 second contract with them, a purchase agreement. Lund was  
4 acting as the creditor financier for him. Lund was the  
5 contract selling the car to him.

6 Lund violated the contract and violated the law  
7 when on September -- within two weeks of the September 9th  
8 transaction, they paid off the loan on his car. And then  
9 on September 22nd, which was -- the transaction was the  
10 9th. So however many days that is. They transferred  
11 title of his car into their name. They had possession of  
12 his vehicle. They had the title to it. They paid off the  
13 note.

14 All of that was against the law by statute. The  
15 statutes are cited in the requested jury instructions.

16 And what Mr. Earl did when they contacted him and  
17 told him: We're not giving you zero percent. We're going  
18 to give you a new financing deal. It got up to almost  
19 eight percent. There is a retail installment contract I'm  
20 not going to make part of the record. It was disclosed in  
21 discovery, where in November, they offered him a  
22 7.79 percent interest rate. That's a great difference  
23 between zero percent.

24 What Lund did -- what Lund did -- not what he did  
25 was illegal. It was against statute. It was in violation

1 of the retail installment contract and it was in violation  
2 of the purchase agreement.

3 And the statutes which I have provided the  
4 Court -- and I want to put these additional statutes on  
5 the record -- demonstrated that he had a legal right per  
6 statute to hold that car, not with intent to permanently  
7 deprive, but as a remedy -- a civil remedy until he got  
8 his vehicle back with the same finance agreement that he  
9 dropped it off.

10 I'm just putting this on the record.  
11 A.R.S. 441371 supports his position. A.R.S. 201105  
12 supports his position. A.R.S. 472711 supports his  
13 position. A.R.S. 44286 supports his position.  
14 A.R.S. 479203 supports his position.

15 Additionally, *State vs. Logan*, 17 Pacific 3rd,  
16 1010 supports his position in terms that at the time of  
17 the taking, which was the time he drove away with the car,  
18 the 2008, he was authorized at the time of the taking --  
19 and the jury would have to be instructed on this -- per  
20 the contract -- and Lund would dispute this. To take that  
21 car, they breached the contract; they breached both of  
22 them; they breached the IRS statutes I've cited and the  
23 statutes I've cited in my jury instructions.

24 And he was within his civil rights to protect not  
25 only his financial interest, but he's a father of three

1 young girls and a wife that he supports, and not let them  
2 commit, which is called yo-yo financing. And that's why  
3 the Truth and Lending Act was passed by the Federal  
4 Government, to prevent these type of things.

5 This is not some old woman who he's accused of  
6 stealing a car from. This is a highly sophisticated,  
7 prosperous alleged victim who solicited him, and then they  
8 turned the tables on him and they did so illegally.

9 Now, additionally, he has suffered greatly. They  
10 have sued him civilly and he was in a civil lawsuit, and  
11 it was in front of Judge Fenzel of the Superior Court.  
12 And for two years, he admitted he had Lund's -- what Lund  
13 alleged was their car, the 2008.

14 Judge Fenzel never ordered him to return it until  
15 the date in the Indictment. He was indicted September 9th  
16 through May of 2012. That's the month that Judge Fenzel  
17 ordered him to return the car.

18 So he was in civil litigation for two years, and  
19 Judge Fenzel had never ordered him. And then within  
20 24 hours of Judge Fenzel ordering him to return the car,  
21 Mr. Earl -- who, by that time, was representing himself  
22 pro per because he ran out of money for a civil lawyer --  
23 filed a Motion For Reconsideration to Judge Fenzel. But  
24 because he had respect for the Court and the law, he  
25 returned the car.



1           In the interim, Judge Fenzel received the motion.  
2   It was filed with the clerk. And, apparently, he had a  
3   change of heart and reversed his order. And this is  
4   public record. And he said he did not have to return the  
5   car.

6           So this is clearly a civil dispute. Lund has  
7   paid the investigator, who's present here, who was hired  
8   by Lund. The police weren't good enough for them. They  
9   paid that private investigator \$11,000, who harassed  
10   Mr. Earl and his family.

11           This man showed up when Mr. Earl was out with his  
12   three daughters at a public restaurant. They came out of  
13   the restaurant and they found this man, who's sitting in  
14   the back of the courtroom, under his car planting a  
15   GPS tracking device. That's a trespass. That's illegal.

16           Mr. Earl had no idea who this man was. His  
17   daughters were present, who are pre-teenagers. He asked  
18   him what he was doing under his car. This is -- that's  
19   pure harassment. And then when Mr. Earl told him to  
20   leave, he removed the GPS tracker.

21           And then Lund got another police officer to go  
22   out and accuse him of theft for removing a GPS tracker  
23   from his own car.

24           And Lund has attempted in Bankruptcy Court to  
25   seize his home.

1           Is there any litigation pending presently?

2           THE DEFENDANT: Yes.

3           MR. GORMAN: There is more litigation presently.

4       So this is not over for him, by any means.

5           And our position is he committed no crime. If we  
6       went to trial, he would be acquitted. He had legal rights  
7       that he asserted. There is really no facts in dispute.

8           And so, I wanted to state this on the record  
9       because I would be remiss in my duty as his lawyer to just  
10      leave and pretend that he's some criminal who's got away  
11      with something. He has got away with nothing. He  
12      suffered. His wife has suffered. His children have  
13      suffered.

14           And the money that has been expended by Lund to  
15      go after him and what he has endured is unbelievable. He  
16      was reindicted and charged with a mandatory prison offense  
17      if he was convicted. And he is not going to be  
18      intimidated because he has integrity. And he would not  
19      take a misdemeanor plea because he did nothing wrong and  
20      he could not go back and look at his wife and his children  
21      when he's been telling them he's doing the right thing  
22      and take a plea. So he wasn't going to.

23           I would like to compliment Mr. Blum for doing the  
24      right thing. He came onto the case late. He re-evaluated  
25      it. I think he's objective and he's done the right thing.

1 So that's what I wanted to put on the record.

2 THE COURT: All right. Your comments are noted  
3 for the record.

4 The State's motion is granted.

5 Mr. Earl, I don't know if you posted a bond of  
6 any kind or if you were simply on OR release, but --

7 THE DEFENDANT: OR.

8 THE COURT: All right. This matter is concluded  
9 for now. Court will be in recess.

10 (WHEREUPON, the proceedings were concluded at  
11 3:27 p.m.)

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C E R T I F I C A T E

I, RENÉE A. MOBLEY, RPR, a Certified Reporter in  
the State of Arizona, do hereby certify that the foregoing  
11 pages constitute a full, true, and accurate transcript  
of the proceedings had in the foregoing matter, all done  
to the best of my skill and ability.

SIGNED and dated this 11th day of March, 2015.

/s/ Renée A. Mobley, RPR

RENÉE A. MOBLEY, RPR

Certified Reporter

Certificate No. 50500